

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MATTEL, INC.,

**ANSWER**

Plaintiff,

-against-

JOHN MASTROANI, D/B/A  
HOT WHEELS DEPOT,

(Daniels, J.)

Defendant.

Case No.: 08 CV 3683

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The defendant, JOHN MASTROIANNI (s/h/a John Mastroani), by his attorney, answering the complaint herein, alleges:

**PARTIES**

1. Admits that he is a natural person and a resident of the State of New York.

**BACKGROUND INFORMATION**

2. Denies sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs numbered "6", "7", "8", "9", "10", "11" and "12" of the complaint.

**MASTROIANNI'S ACTIONS**

3. Denies that defendant Mastroianni operates the retail store annexed to the complaint as Exhibit "A", as alleged in paragraph "13" of the complaint.
4. Denies each and every allegation contained in paragraph "14" of the complaint.

**FIRST CLAIM FOR RELIEF**

5. Repeats each and every denial set forth hereinabove.
6. Denies sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph "16" of the complaint.

7. Denies the allegations contained in paragraph numbers “17”, “18” and “19” of the complaint.

**SECOND CLAIM FOR RELIEF**

8. Repeats each and every denial set forth hereinabove.

9. Denies sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph “21” of the complaint.

10. Denies each and every allegation contained in paragraphs “22” and “23” of the complaint.

**THIRD CLAIM FOR RELIEF**

11. Repeats each and every denial set forth hereinabove.

12. Denies sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs “25” and “26” of the complaint.

13. Denies each and every allegation contained in paragraphs “27”, “28” and “29” of the complaint.

**FOURTH CLAIM FOR RELIEF**

14. Repeats each and every denial set forth hereinabove.

15. Denies sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs “31”, “32” and “33” of the complaint.

16. Denies each and every allegations contained in paragraphs “34” and “35” of the complaint.

**FIFTH CLAIM FOR RELIEF**

17. Repeats and each end every allegation set forth hereinabove.

18. Denies each and every allegation contained in paragraph “37” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

19. The Court lacks personal jurisdiction over the defendant by reason of improper and insufficient service of process.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

20. The plaintiff has failed to join a required party pursuant to Rule 19; to wit, JOHN’S BAY LIMOUSINE, INC. d/b/a HOT WHEELS DEPOT.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

21. By letter dated May 28, 2008, the defendant, through his attorney, accepted a settlement offer from the plaintiff that included the entry of a consent order and permanent injunction as set forth in paragraph (10), para. (A) of the complaint.

22. Accordingly, the plaintiff is not entitled to further injunctive relief in this action.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

23. On or about November 29, 2007, John’s Bay Limousine, Inc. (“JBL, Inc.”) d/b/a Hot Wheels Depot was approved as an “authorized retailer” of “Hot Wheels” miniature cars and accessories owned and/or distributed by the plaintiff and its affiliates.

24. At all times alleged in the complaint, JBL, Inc. has continued to market and sell “Hot Wheels” miniature cars and accessories at its retail store located at 324 Depot Road, Huntington Station, New York.

25. By reason of the foregoing, JBL, Inc., as an “authorized retailer,” believed that it had the right and privilege to advertise these cars and accessories using the name “Hot Wheels” name and logo at the aforesaid location.

26. After written notice from the plaintiff that the continued use of the “Hot Wheels” name and logo was not authorized, JBL, Inc. voluntarily removed its “Hot Wheels Depot” sign(s) installed on or about January 1, 2008 from the exterior of its retail store at the aforesaid location.

27. By reason of the foregoing, any infringement on the plaintiff’s protectable copyright and/or trademark rights by the defendant JBL, Inc. is and was unintentional and innocent.

28. By reason of the foregoing, the plaintiff has not suffered any compensable damages as a result of this limited and innocent infringement of the protectable copyright and/or trademark rights it may have.

**WHEREFORE**, the defendant demands judgment dismissing the complaint herein, together with such other and further relief as this Court deems just and proper.

Dated: Northport, New York  
June 3, 2008

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JOHN G. POLI, III, P.C.  
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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK)

)SS.:

COUNTY OF SUFFOLK)

ROSEMARIE POLI, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside at Huntington, New York.

That on June 4, 2008, I served a copy of the within **ANSWER**, by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service, addressed to each of the following persons at the last known address set forth after each name:

Dunnegan, LLC  
Attorneys at Law  
350 Fifth Avenue  
New York, NY 10118

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ROSEMARIE POLI

Sworn to before me this  
4th day of June, 2008

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NOTARY PUBLIC